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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

No. 27

SECRETARY OF AGRICULTURE, *Petitioner*,

v.

CENTRAL ROIG REFINING COMPANY, ET AL., *Respondents*.

No. 30

PUERTO RICAN AMERICAN SUGAR REFINERY, INC., *Petitioner*,

v.

CENTRAL ROIG REFINING COMPANY, ET AL., *Respondents*.

No. 32

THE GOVERNMENT OF PUERTO RICO, *Petitioner*,

v.

THE SECRETARY OF AGRICULTURE, ET AL., *Respondents*.

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

MEMORANDUM OF THE GOVERNMENT OF PUERTO RICO IN REPLY TO BRIEF OF THE AMERICAN SUGAR REFINING COMPANY, ET AL. IN OPPOSITION TO GRANT OF WRIT.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1948.

No. 575.

SECRETARY OF AGRICULTURE, *Petitioner*,

v.

CENTRAL ROIG REFINING COMPANY, ET AL., *Respondents*.

No. 580.

PORTO RICAN AMERICAN SUGAR REFINERY, INC., *Petitioner*,

v.

CENTRAL ROIG REFINING COMPANY, ET AL., *Respondents*.

No. 585.

THE GOVERNMENT OF PUERTO RICO, *Petitioner*,

v.

THE SECRETARY OF AGRICULTURE, ET AL., *Respondents*.

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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MEMORANDUM BY THE GOVERNMENT OF PUERTO RICO IN REPLY TO BRIEF OF THE AMERICAN SUGAR REFINING COMPANY, ET AL., IN OPPOSITION TO GRANT OF WRIT.

TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The function, we take it, in the exchange of briefs in respect to the petition for a writ of certiorari is sharply to state issues, not to argue or to resolve them. In this instance your petitioner, the Government of Puerto Rico, asks for a writ from this Court to review the judgment of the

court below in the case styled *Central Roig Refining Company, et al. v. Secretary of Agriculture*, 171 F. (2d) 1016, limited to the constitutional question. Among the parties below Central Roig and Western support the petition of the Government of Puerto Rico; the Solicitor General has waived his right to answer; the Porto Rican American company takes a position of neutrality; and the Mainland Refiners alone oppose. In general, the American Sugar Refining Company, et al., take positions opposed to those of the Government of Puerto Rico. In doing so their brief helps to clarify differences and, thereby, becomes a source of argument for the granting of the writ. For that reason it is here necessary to do no more than point out that the constitutional issue needs no further processing by the court below; to indicate the sharp differences between your petitioner and the Mainland Refiners on the relevant points of law; and to challenge the degradation of the Government of Puerto Rico to a mere municipality stripped of all power lawfully to protect its own interests and those of its people.

ARGUMENT

1. The Constitutional Issue, Without Further Processing by the Court Below, is Ready for Presentation to this Court.

The Mainland Refiners argue (Br. p. 12) that there is no record built up below on the basis of which this Court can entertain the constitutional question. They insist that a judgment upon the validity of the accused section (Sugar Act of 1948, Section 207(b)) "shall not be reached without adequate factual support." With this principle there can be no disagreement; its requirements are fully satisfied here. The Central Roig and the Western Sugar Refining Company raised this question in the proceeding before the Secretary of Agriculture (R. p. 182). It was the major one of the two questions raised by Central Roig and Western in their petition to the Court of Appeals to renew Sugar Order

No. 18 (R. p. 160). The Mainland Refiners, who professed themselves as without interest in the allocations intervened in the court below solely in respect to the constitutional question (R. 188). The statute speaks for itself; the legislative history is recited in the Congressional debates, of which this Court can take judicial notice, and from which the Mainland Refiners have quoted at length (Br. in U. S. Ct. of Appeals, pp. 6, 7, 13, 16). The facts which attend the operation of the accused section admit of no dispute. The court below found no deficit in "adequate factual support"; nor was this argument which the Mainland Refiners now make urged upon it. On the contrary, as the opinion below states, "All agree that this question has been fully argued" (171 F. (2d) 1016, 1019). The only shortcoming thus far has been the failure of the court below to decide the constitutional issue. And this is the deficit which prompts the petition for the writ. As pointed out in our Petition (p. 16) this failure in no wise adds to the difficulties of this Court in resolving the constitutional issues presented.

2. In Respect to the Constitutional Question, the Government of Puerto Rico Joins Issues Sharply With the Mainland Refiners.

It is neither possible nor necessary to pass in review the whole of the Mainland Refiners' objections. We are persuaded, as we hope fully to demonstrate if the writ asked for is granted, that their contentions are largely specious and their argument beset with infirmities. For this occasion, it is, however, enough to point out, in terms of a few examples, that the propositions put forward by them are subject to serious challenge.

This case involves more than "a dispute between the Puerto Rico sugar refiners" (Br. p. 1); it concerns—and from the first has concerned—an arbitrary limitation upon the insular refining industry. It has involved "a statutory appeal" to the courts (Br. p. 2); but it has also involved not as a derivation, but as a principal question, a constitu-

tional question. It speaks as if the Government of Puerto Rico for the first time insinuates a constitutional question into a case solely concerned with the application of a statute (Br. p. 3). The truth is that from the time the petition for review was first taken to the court below, the dominant question and the principal relief asked for has been a declaration of the invalidity of the accused section. They correctly state that "Central Roig and Western" petitioned the Court of Appeals "to do one thing—to set aside the Secretary's . . . order" (Br. p. 3), but they neglect to state that Central Roig and Western asked that this be done by denying the power of the Secretary to issue any order at all. And to call our petition a demand for "an advisory opinion" (Br. p. 3), when Section 207(b) was being enforced to the great and irreparable injury of the Government, the refiners, and the people of Puerto Rico, is grossly to confuse forms of action. It is only by willing the major and disturbing question out of the case that the Mainland Refiners discover that "the only question presented by the decision of the Court of Appeals is the narrow question" whether it erred in its interpretation of the standards presented by the Congress as a guide to allotment.

Nonetheless, the Mainland Refiners undertake to justify the accused section and in doing so they play fast with the facts and loose with legislative language. We insist—and if the writ is granted propose to demonstrate—that the accused section is grafted upon the measure for farm relief known as the Sugar Act of 1948. The Mainland Refiners attempt to make it an integral part of that Act (Br. pp. 6-9). To this end, and in spite of the plain language of Section 207, they insist upon converting limitations upon the marketing of refined sugar, imposed only upon off-shore territories into a quota system for refined. In doing so they ignore the double fact that 126,033 tons represent the limit within which Puerto Rico refiners can compete for the continental market, while mainland refiners are free to compete for the business of refining all sugar to be marketed on the continent, including the "portions" which off-shore

territories may have—if they succeed in getting it in competition with the Mainland Refiners (Br. pp. 7-8). It is this confusion of limitation with quota that makes invalid the table of restricted opportunity (Br. p. 9). The figures in the last column do not represent "quantity available" to Mainland Refiners, but only quantity now secured to them by Section 207 without having to compete for it. And the low figure in which they picture their plight if legal protection is withdrawn represents, not the raw sugar to which they have access, but the amount which is theirs without having to strive for it. The total quantity available is the whole supply which may be marketed within the continental United States. And if they refine no beet sugar, it is not because the law forbids, but because the beet growers have devised a more efficient technique. They may refine all the sugar marketed on the continent so far as the law is concerned.

The Mainland Refiners allege, but are at quite a loss to justify, the restrictions as in the public interest. The rationale of crop control, which justified the regulation of raw sugar, has no validity as applied to refined. They argue that the privilege accorded them is compensation for the loss of the world market on which supply they were free to draw before the first, or Jones-Costigan, sugar act was passed. (Br. pp. 7-8). It is hard to discover "compensation for what"; for they are still free to compete for all the business of refining sugar marketed within the continental United States; and for sale in foreign markets they still have access to the world supply. Besides, Puerto Rico, without compensation and to its own detriment, has been cut off from the same source of supply. The "legislative need" (Br. p. 8) amounts to no more than the right to be vested with the business without having to contend for it. Puerto Rico asks for no such proscriptive right; it demands only a chance to compete. If the result is "grave injury and dislocation" (Br. p. 7), that is the appointed way of free enterprise.

The Mainland Refiners take similar liberties with political questions. It is hardly relevant to speak of the power of the Congress over the territories—at least over the offshore territories—as plenary (Br. p. 14), when the accused section is a regulation, valid or invalid, of the continental market. It is admitted that the status of Puerto Rico is a dominant factor in this case; in fact the determination of that status is a principal reason for filing this petition. But so important and intricate a question is not to be resolved by the magic of the words incorporated and unincorporated (Br. pp. 10, 11). In the "balancing of legislative needs" (Br. p. 14), the Mainland Refiners get all the benefits while the insular refiners suffer all the disabilities. To insist that in the exercise of a disputed power Puerto Rico has been treated fairly (Br. p. 10), is hardly in point where the issue is the power of the Congress to act at all. Nor is it a perfect example of the "resort to tests" and of the experimental process (Br. pp. 10-11) to freeze the Puerto Rican industry at a figure it attained in its infancy. The contention that, even if the Congress can restrict or even prohibit the insular refining of sugar, it does not follow that the Congress can halt the processing or manufacture of other commodities in Puerto Rico, because sugar is a peculiar case (Br. p. 11) is without merit. For the question is of power; and, if continental producers of other products are threatened with serious insular competition, they may, using sugar as a precedent, insist that legislation be made to protect them against "grave injury and dislocation". And, even more important, it is a little unkind to call the issue a "political question" and to bid Puerto Rico to settle the question in the political forum, when Puerto Rico has no vote in either house of the Congress and no access to the political process.

It is easy enough to continue this dissection of the argument of the Mainland Refiners. But this is not the occasion for demonstrating to this Court that their positions are untenable and that our arguments are sound. It is enough

that this recitation shows that the constitutional issue abounds in open questions.

3. The Contentions that the Government of Puerto Rico Has No Standing to Sue and No Justiciable Interest in this Cause Are Without Merit.

We take it that the issues of Puerto Rico's standing to sue and its justiciable interest in this cause of action are not now before this Court. In the court below the Mainland Refiners, alone among the parties to this case, challenged intervention by petitioner. The matter was thoroughly explored in briefs submitted by the adverse parties. The applicable principles of law were there presented; the authorities were expounded; the relevant cases—and a host of irrelevant ones—were cited by the Mainland Refiners and dissected by your petitioner. On that occasion the Mainland Refiners put before the court in a more elaborate form the contentions presented here (Br. pp. 14-15). The Court of Appeals rejected all of these contentions, and on June 6, 1948, issued an order granting the petition of the Government of Puerto Rico to intervene in this case. The Mainland Refiners are on unsound ground in making this contention; for they make this case a "dispute between three Puerto Rican sugar refiners" over the shares within the limits of 126,033 tons allowable to them under the statute (Section 205(a)); yet they were not parties to the administrative proceeding below, have disavowed all interest in the "narrow" or statutory question; and, like the Government of Puerto Rico, became a party to the cause only because of an interest in the constitutional issue. In any event, the order of the court below makes the Government of Puerto Rico a party with the rights of any and all other parties in interest. And the Mainland Refiners have taken, and here are taking, no appeal from that order. Even if it were subject to appeal, the petition for a writ of certiorari does not present the proper occasion whereon to challenge it.

It is more to the point that in the instant case, the raising of the constitutional issue is in no wise contingent upon the standing to sue of the Government of Puerto Rico or upon its justiciable interest. That issue was in the case while the Secretary was concerned with his order. It was in the case before—in fact its presence was the occasion for—the intervention of the Government of Puerto Rico. The issue was raised by Central Roig and Western who are—and, if the Government of Puerto Rico were not a party, would still be—pressing it here. In strict terms the Government of Puerto Rico has entered this case only to call the attention of the courts to its distinctive and vital interest in a cause of action initiated by others which would, with identical issues, go forward even if it were not a party.

CONCLUSION.

The Government of Puerto Rico renews its challenge to the accused section (Sugar Act, Section 207(b)), as not authorized by the Constitution, and as being contrary to the spirit and to a number of specific provisions of that document. It asks for a writ of certiorari to the end that, after full hearing and careful inquiry, this Court may resolve the constitutional question here presented or in the alternative remand it to the court below with a mandate to decide it.

Respectfully submitted,

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